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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-885

COMMISSIONER OF EDUCATION OF NEW JERSEY AND SUPERINTENDENT OF SCHOOLS OF HUNTERDON COUNTY,

Petitioners,

v.

BOARD OF EDUCATION OF THE NORTH HUNTERDON REGIONAL HIGH SCHOOL, TOWNSHIP OF FRANKLIN, CHARLES MATHEWS, AUGUST KNISPEL and CHARLES A. PATKOCHIS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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No. ____

COMMISSIONER OF EDUCATION OF NEW JERSEY AND SUPERINTENDENT OF SCHOOLS OF HUNTERDON COUNTY,

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v.

BOARD OF EDUCATION OF THE NORTH HUNTERDON REGIONAL HIGH SCHOOL, TOWNSHIP OF FRANKLIN, CHARLES MATHEWS, AUGUST KNISPEL and CHARLES A. PATKOCHIS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

The petitioners, Commissioner of Education of New Jersey and Superintendent of Schools of Hunterdon County, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of New Jersey entered in this proceeding on September 22, 1977.

Opinions Below

The opinion of the Supreme Court of New Jersey is reported at 74 N. J. 345, 378 A.2d 218 (1977) and is appended hereto as Appendix A. No opinion was issued by the New Jersey Superior Court, Appellate Division, in which the action was commenced since that court dismissed the action on procedural grounds without reaching the merits. The order of dismissal was not reported and is appended hereto as Appendix B.

Jurisdiction

The opinion of the Supreme Court of New Jersey, entered on September 22, 1977, was the final judgment of the State's highest court. It declared N.J.S.A. 18A:13-8 invalid, as applied, on the ground that it is inconsistent with the Equal Protection Clause of the Federal Constitution. See *Reynolds* v. *Sims*, 377 U.S. 533 (1964). The federal question presented by the decision below is substantial and important. Sections of the record below which project this question are set forth in Appendix D to this Petition. The jurisdiction of this court is invoked, therefore, under 28 U.S.C. § 1257 (3) to review the judgment of the Supreme Court of the State of New Jersey by the issuance of a writ of certiorari.

Constitutional and Statutory Provisions Involved

This case involves the first section of the Fourteenth Amendment to the Constitution of the United States which provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

> citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The New Jersey statute pertinent to this proceeding is N.J.S.A. 18A:13-8, as amended by chapter 161, laws of 1972, which governs the apportionment of seats on regional boards of education. This statute is set forth in Appendix C to this petition.

Question Presented

Is the apportionment of a board of education of a special regional high school district governed by the same strict requirements of population equality as apply to state legislative districting?

Statement of the Case

This petition involves the application of "one person, one vote" principles to the apportionment of seats on the board of education of a special regional high school district.

The setting of the case is northern Hunterdon County. There are only 26,666 inhabitants in the 171.30 square miles which comprise the North Hunterdon regional high school district (App. D at 31a). It is thus one of the most sparsely populated areas of New Jersey. The regional district consists of twelve municipalities with the following 1970 census populations:

Name	*Population*
Bethlehem Township	1,385
Califon Borough	970
Clinton Town	1,742
Clinton Township	5,119
Franklin Township	2,154
Glen Gardner Borough	874
Hampton Borough	1,386
High Bridge Borough	2,606
Lebanon Borough	885
Lebanon Township	4,235
Tewksbury Township	2,959
Union Township	2,351
	26,666

(App. D at 27a)

Each municipality constitutes a separate school district which provides educational programs for local children through grade eight. N.J.S.A. 18A:8-1; 18A:33-1. Eight of the districts have one elementary school each, while the remaining four districts each have two elementary schools. The voters of each municipality elect their own board of education to govern the provision of educational services within their respective school districts. N.J.S.A. 18A:12-10.

Due to their small populations and the need to provide diversified educational programs at the high school level, municipalities in the North Hunterdon area agreed, in 1947, to establish a special regional school district for the

purpose of providing high school education to all children residing within the region. N.J.S.A. 18A:13-1 *et seq.* In 1972, the voters of High Bridge Borough elected to become the twelfth and, to date, last member of the North Hunterdon regional high school district.

Prior to 1972, the governing legislation provided for the election of one regional board member from each municipality within the regional school election. Chapter 275, Laws of 1931, N.J.S.A. 18A:13-8. However, concern was expressed that this method of selecting members of the regional board violated "one person, one vote" principles due to the substantial differences in population of the constituent municipalities. Therefore, in late 1970 the attorney for the regional board requested Professor Ernest C. Reock, Jr. of Rutgers University, a recognized expert in the field of reapportionment, to devise a method for apportioning the Board of Education of the North Hunterdon regional district which would comply with "one person, one vote" principles while at the same time maintaining, to the maximum extent possible, local representation on the regional board by the individual municipalities. As a result of his study, Professor Reock devised an apportionment plan which was adopted by the Legislature. Chapter 161, Laws of 1971 (App. C).

When this litigation was commenced, Professor Reock submitted an affidavit to the Supreme Court of New Jersey in which he expressed the expert opinion that ". . . the current method of apportionment of regional boards set forth in N.J.S.A. 18A:13-8, both in theory and as currently applied to respondent Board, most closely approaches the "one person one vote, principles, within the principles of sound educational governance" (App. D at 40a). No counter affidavits or exhibits were submitted by the parties challenging the present apportionment plan. The only indication of the respondents' conception of a better appor-

tionment plan is contained at pp. 13-15 of the brief submitted to the Supreme Court of New Jersey, where they advocate a reapportionment plan that either ignores the municipal boundary lines of the constituent municipalities comprising the special regional high school district or results in the grouping of non-contiguous municipalities in multi-municipality districts.

The Supreme Court of New Jersey held that the apportionment plan devised by Professor Reock was unconstitutional because it resulted in greater disparities in voting power among the constituent municipalities of the high school district than this court has permitted in state legislative districting. See *e.g., Mahan* v. *Howell,* 410 U.S. 315 (1973); *Kirgarlin* v. *Hill,* 386 U.S. 120 (1967); *Swann* v. *Adams,* 385 U.S. 440 (1967). The court concluded that *Hadley* v. *Junior College District,* 397 U.S. 50 (1970) ". . . forecloses the State's contention that significantly greater disparities in voting power may be justified on the basis of the functions which the board performs" (App. A at 10a). Although it recognized that the State has a legitimate interest in seeking to preserve the local municipal lines of a constituent municipality in a regional high school district, the Supreme Court of New Jersey read the Court's state legislative districting cases to only permit slight deviations in voter equality to be justified by such interests.

> "Certainly the State may have a legitimate interest in retaining local municipal lines in apportioning seats on the North Hunterdon board. The Court has on various occasions commented that the needs of a local community may sometimes justify departures from strict equality. See *Lockport* v. *Citizens for Community Action,* —— U.S. ——, —— S. Ct. ——, 51 L. Ed. 2d 313, 323 (1977); *Abate* v. *Mundt, supra* 403 U. S. at 185, 29 L. Ed. 2d at 402-03. In the instant case, we readily concede that by allowing each community, or contiguous communities, to choose a representative for the board, it is more probable that he will be known to the constituency which he must serve. It becomes easier to make grievances known to one's chosen representative; a board member will be more likely to be aware of individual's concerns and local needs; and finally, a candidate has an easier task in trying to reach all voters through local campaigning. Moreover, we recognize that mathematically equal representation is more difficult when there are relatively small populations involved.
>
> "But these arguments are only sufficient to justify allowing slight deviations from equality." (App. A at 14a-15a).

The Supreme Court of New Jersey therefore declared that N.J.S.A. 18A:13-8 is unconstitutional as applied to the North Hunterdon regional high school district.

Reasons for Granting the Writ

Certiorari should be granted to resolve whether the same street requirement of population equality which applies to state legislative districting also govern the apportionment of a special regional board of education.

This petition squarely presents the question whether the same demanding requirement of substantial population equality which governs the apportionment of state legislative districts also applies to the apportionment of the members of a special regional high school district. The Court previously has recognized that the range of permis-

sible population deviations consistent with the principles of "one person one vote" may vary depending upon the context. Thus, the Court has required adherence to a strict standard of population equality among congressional election districts. See *e.g. Kirkpatrick* v. *Preisler*, 394 U. S. 526, reh. den. 395 U. S. 917 (1969); *Wells* v. *Rockefeller*, 394 U.S. 542 (1969). However, it has allowed greater deviations from population equality in the field of state legislative districting. See *e.g., Mahan* v. *Howell, supra; Abate* v. *Mundt*, 403 U. S. 185 (1971); *Swann* v. *Adams, supra*. The question projected for review by this petition is whether the same reasoning which led the court to conclude that greater deviations from absolute population equality should be tolerated in state legislative districting than in congressional districting also points to the conclusion that a more liberal standard of population equality should be tolerated in the election of the board of a special regional high school than is applied in the state legislative districting.

The Court in *Reynolds* v. *Sims, supra*, noted that a significant justification for permitting greater deviations from absolute population equality in State legislative districting was:

> "[T]hat of insuring some voice to political subdivisions, as political subdivisions. Several factors make more than insubstantial claims that a State can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained. Local governmental entities are frequently charged with various responsibilities incident to the operation of state government. In many States much of the legislature's activity involves the

> enactment of so-called local legislation, directed only to the concerns of particular political subdivisions" 377 U. S. at 580-581

In *Mahan* v. *Howell, supra*, the Court, relying upon the considerations previously noted in *Reynolds* v. *Sims*, specifically held that "[a]pplication of the 'absolute equality' test of *Kirkpatrick* to state legislative redistricting may impair the normal functioning of state and local governments." It therefore sustained a percentage variation of 16.4% in the apportionment of the Virginia Legislature, while noting that in the field of state legislative districting ". . . this percentage may well approach tolerable limits." 410 U. S. at 329.

However, no prior decision of the Court even suggests that these same stringent requirements of population equality also govern local governmental agencies which perform limited and special functions. On the contrary, in *Salyer Land Co.* v. *Tulane Water District*, 410 U. S. 719 (1973) and *Associated Enterprises* v. *Toltec Watershed Improvement District*, 410 U. S. 743 (1973) the Court held that the principles of "one person, one vote" do not apply at all to the election of the governing body of a local water storage district. This recognition that the principles of "one person, one vote" may be wholly inapplicable to certain government agencies due to their special and limited functions furnishes strong support for the more modest claim that the same stringent requirements of population equality which govern state legislative districting do not necessarily apply to a local government agency performing special and limited functions.

Furthermore, the only apportionment opinion of the Court relating solely to the governing body of a school district, *Hadley* v. *Junior College Dist. of Metro Kansas*

City, Mo., supra, was essentially addressed to whether the principles of "one person, one vote" were applicable at all to the election of a regional school board rather than to the range of permissible population deviation among constituent districts. Indeed, while finding the particular plan in *Hadley* to be unconstitutional due to its inherently discriminatory nature, the Court expressly left open the question of the range of permissible population deviation in a regional school district composed of constituent districts:

> "We would be faced with a different question if the deviation from equal apportionment presented in this case resulted from a plan that did not contain a built-in bias in favor of small districts, but rather from the inherent mathematical complications in equally apportioning a small number of trustees among a limited number of component districts. We have said before that mathematical exactitude is not required. . . ." 397 U. S. at 57-58.

This petition provides the Court with an opportunity to answer the question left open by *Hadley*, in light of its subsequent holding in *Mahan* v. *Howell* that the range of permissible population deviation in apportionment may vary depending upon the nature of the governmental agency to which the representatives will be elected.

This case presents particularly compelling circumstances for permitting more liberal deviations from population equality than would be permitted in state legislative districting. Initially, it should be noted that the State Department of Education now has vast power over the operation of local school districts in New Jersey (see generally *Robinson* v. *Cahill*, 69 N. J. 449, 355 A. 2d 129 (1976)), thus significantly circumscribing the powers exercised by local boards of education.

Even more importantly, North Hunterdon regional district solely provides the high school educational programs for the pupils within its borders. The twelve constituent members of this regional district maintain their own schools, governed by elected boards of education, to provide educational programs at the elementary level. It is of course extremely important that there be continuity between the educational program which these constituent municipalities provide at the elementary school level and the program offered at the regional high schools. Therefore, the constituent municipalities have a vital interest in maintaining separate and independent representation on the regional board. Such representation assures communication between the constituent municipalities and the regional high school district to which the members send their pupils upon graduation from elementary schools and also promotes the development of a non-fragmented educational system. There is a correspondingly greater need within this context than in any other previously considered by the Court to permit adherence to municipality boundary lines in districting, even if the result is greater deviations in population equality than would be permissible in state legislative districting.* The Court should therefore grant this petition to determine whether the Supreme Court of New Jersey's reading of the Court's prior apportionment cases, rather than promoting, actually conflicts with the goal of effective democratic government.**

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* Significantly, the respondents have never suggested a method of apportioning the North Hunterdon regional board superior to that devised by Professor Reock. The only plans offered by them either totally ignores municipal boundary lines or group non-contiguous municipalities in multi-municipality districts.

** The application of unduly stringent requirements for the apportionment of seats on a regional school board also may have the un-

(Footnote continued on following page)

There also can be no doubt as to the importance of the question presented by this petition. Nineteen of the 69 regional school districts in New Jersey have a greater range of population deviation among constituent districts than that of North Hunterdon regional district. A total of 45 regionals have a greater population deviation than the Court approved in *Mahan* v. *Howell* for the purpose of state legislative districting. Furthermore, the recent decisions in *Baker* v. *Regional High School District No. 5*, 520 F. 2d 799 (2nd Cir. 1975) *cert. den.* 424 U. S. 965 (1975), *Barnes* v. *Bd. of Directors, Mt. Anthony U. Sch. Dist.*, 418 F. Supp. 845 (D. Vt. 1976) and *Leopold* v. *Young*, 340 F. Supp. 1014 (D. Vt. 1972), indicate that the problems of apportioning seats on regional school boards are not unique to New Jersey. Indeed, since the grouping of individual districts into consolidated, regional or unified districts is a phenomenon common to most states, it is reasonable to assume that the federal question projected by this petition is one of broad and far-ranging significance. Furthermore, the failure of the Supreme Court of New Jersey to recognize that the range of permissible population deviation may vary depending upon the function of the office for which election districts are established has obvious implications to areas apart from the apportionment of regional school boards. Therefore, this petition presents an issue of clear general public importance.

In sum, this petition satisfies all of the specific criteria which the Court has articulated for determining whether

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(Footnote continued from preceding page)

fortunate effect of encouraging legislation to make such boards appointive, rather than elective, since the Court has held in *Sailors* v. *Board of Education of the County of Kent*, 387 U.S. 105 (1967) that "one person, one vote" principles do not apply to appointive regional boards.

a writ of certiorari should be issued to review the decision of a state court. Rule 19(1) (a). The question whether greater deviations of population may be tolerated for regional high school districts than for state legislative districts has not heretofore been determined by the Court. Furthermore, the resolution of this novel question by the Supreme Court of New Jersey appears inconsistent with the Court's flexible application of one man/one vote principles in *Mahan* v. *Howell*, *Salyer Land Co.* v. *Tulare Water District* and *Associated Enterprises* v. *Toltec Watershed Improvement District*, *supra*. Finally, the question is one of substantial importance.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari to the Supreme Court of New Jersey should be granted.

Respectfully submitted,

WILLIAM F. HYLAND
Attorney General of New Jersey
Attorney for Petitioners, Commissioner of Education of New Jersey and Superintendent of Schools of Hunterdon County

APPENDIX A

Opinion of the Supreme Court of New Jersey of September 22, 1977

(Filed—September 22, 1977)

SUPREME COURT OF NEW JERSEY
A-79 SEPTEMBER TERM 1976

TOWNSHIP OF FRANKLIN, IN THE COUNTY OF HUNTERDON, a municipal corporation of New Jersey, CHARLES MATHEWS, AUGUST KNISPEL and CHARLES A. PATKOCHIS,

Plaintiffs-Appellants,

v.

BOARD OF EDUCATION OF THE NORTH HUNTERDON REGIONAL HIGH SCHOOL, a body politic and corporate of New Jersey, NORMAN GATHANY, Hunterdon County Superintendent of Schools and FRED G. BURKE, State Commissioner of Education,

Defendants-Respondents.

Argued March 21, 1977—Decided Sep 22 1977.

On certification to the Superior Court, Appellate Division.

Mr. Richard G. O'Brien argued the cause for appellants (*Messrs. Bowers, Rinehart, Murphy and O'Brien,* attorneys).

Appendix A

Mr. Wesley L. Lance argued the cause for respondent Board of Education.

Mr. Stephen Skillman, Assistant Attorney General, argued the cause for respondent State Commissioner (*Mr. William F. Hyland,* Attorney General of New Jersey, attorney; *Mr. Skillman,* of counsel; *Ms. Jane Sommer,* Deputy Attorney General, on the brief).

The opinion of the Court was delivered by PASHMAN, J.

Plaintiff in this case, the Township of Franklin, challenges the apportionment of seats on the regional school board of the North Hunterdon Regional High School District. Essentially, it argues that the apportionment formula embodied in N.J.S.A. 18A:13-8, as applied to its district, violates the "one-person, one-vote" rule laid down by the United States Supreme Court. *See Reynolds* v. *Sims,* 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964).

I.

Plaintiff commenced this action by filing a notice of appeal to the Appellate Division. R. 2:2-3(a)(2). It named as defendants the North Hunterdon Regional High School, the County School Superintendent and the State Commissioner of Education.[1] The suit was immediately challenged

[1] Initially, plaintiff also contested the board's alleged failure to call a district referendum in order to determine the appropriate method of apportioning appropriations for school operating expenses between constituent districts. N.J.S.A. 18A:13-25. It questioned the constitutionality of the statute providing for such appropriations. The parties have stipulated to the dismissal of this issue without prejudice or costs.

Appendix A

by the defendant board on two procedural grounds. The board argued first, that the suit was untimely because no appeal had been filed within 45 days of the Commissioner's order, R. 2:4-1, and second, that the plaintiff had failed to exhaust its administrative remedies before taking the appeal. The Appellate Division agreed and dismissed the appeal without making a decision on the merits. We granted plaintiff's petition for certification, 69 N. J. 74 (1975), and accepted its "Statement in Lieu of Transcript," supplemented by defendants' statement of facts, as the record on appeal.

Defendants' procedural contentions have not been pursued before this Court. Nevertheless, we conclude that these claims would not bar the Court from rendering a determination on the merits since the issues presented are of public importance and involve substantial constitutional questions. *See Jacobs* v. *State Highway Authority,* 54 N. J. 393, 396 (1969); *McKenna* v. *N. J. Highway Authority,* 19 N. J. 270, 276 (1955); *Holloway* v. *Pennsauken Tp.,* 12 N. J. 371, 375 (1953); *Nelson* v. *So. Brunswick Planning Bd.,* 84 N. J. Super. 265, 275 (App. Div. 1964); *Wilbert* v. *De Camp,* 72 N. J. Super. 60, 68 (App. Div. 1962); R. 2:2-3(a)(3). Moreover, we are not faced in this case merely with an administrative regulation, but with the constitutionality of the apportionment statute itself.

Plaintiff argues that the current distribution of seats on the North Hunterdon Regional High School District School Board fails to adequately represent that municipality's population of 2,154.[2] It points out that it is repre-

[2] All references to population are computed on the basis of an "apportionment population," and are the figures used in calculating

(Footnote continued on following page)

Appendix A

sented on the fifteen member board by only one seat, while High Bridge, which has only a slightly higher population, 2,606, is allocated two seats. This results in a maximum deviation from population equality of 50.3% between the two municipalities, with Franklin Township having a variance of 27.2% above the norm and High Bridge having a variance of 23.1% below the norm.[3]

As will be seen, the problems of apportioning seats on the Hunterdon regional school board while retaining local municipal lines are compounded by the unique physical characteristics of the region in which the Township of Franklin is located. Plaintiff is one of twelve constituent school districts which make up the North Hunterdon Regional High School District.[4] Counsel advised us that this

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(Footnote continued from preceding page)

the current distribution of seats on the board as provided by N.J.S.A. 18A:13-8(a). That figure is determined in each district by deducting institutional and military population from the total census population. Although not projected by this appeal, we entertain serious doubts whether such an exclusion is constitutional in light of what was said in *Mahan* v. *Howell*, 410 U.S. 315, 330, 93 S.Ct. 979, 35 L.Ed.2d 320, 333-34 (1973), modified 411 U.S. 922, 93 S.Ct. 1475, 36 L.Ed.2d 310, 316 (1973); *Davis* v. *Mann*, 377 U.S. 678, 691, 84 S.Ct. 1453, 12 L.Ed.2d 609, 617 (1964) and *Carrington* v. *Rash*, 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965). As to the use of the Census in arriving at population figures, see *Conner* v. *Finch*, U.S , S.Ct. , L.Ed.2d (1977).

[3] The "norm" refers to absolute voter equality. Thus, utilizing a 15 member board the norm would be represented by having one board seat for every 1,694 persons. *See infra* at 8, n. 6.

[4] The other members of the regional district are the Townships of Bethlehem, Clinton, Franklin, Lebanon, Tewksbury, and Union; and the Boroughs of Califon, Glen Gardner, Hampton, Lebanon, and High Bridge; and the Town of Clinton.

Appendix A

is the largest number of constituent municipalities making up any single regional school district in this State, and possibly in the country. Moreover, these component municipalities have relatively small populations which are not equivalent in size; they range from 874 in Glen Gardner to a population of 4665 in Clinton Township. These municipalities, and the 25,412 persons in the district's "apportionment population," are spread over an area of 171.30 square miles.

The present statute was drafted specifically to meet North Hunterdon's apportionment problems. The sponsor's statement to the 1972 amendment to the act indicates that it was designed to deal with the problems of a district involving more than nine municipal members; the only district falling within that category was, and still is, North Hunterdon. Under the pre-existing apportionment formula the voter disparity would have been substantially greater. Although Franklin Township would have had a variance of only 1.7% from the norm, a maximum variance of 179.0% would have existed between Clinton Township and Glen Gardner.

In an affidavit filed on behalf of defendants, Ernest Reock, one of the primary draftsmen of the present apportionment statute, N.J.S.A. 18A:13-8, stated that he had specifically considered the problems of North Hunterdon in arriving at the scheme. He noted that he had been asked to determine whether High Bridge's inclusion in the region would have affected adversely the statutory formula even though it had not yet been formally included in the region at that time. Reock also indicated that he had considered alternatives to the present scheme which would reflect populations in a more representative fashion on the board. Increasing the size of the board was rejected be-

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Appendix A

cause it would have resulted in an unmanageably large board. Similarly, "at large" elections were ruled out because they failed to take into account local municipal lines.

The present legislation was devised in order to provide the least possible deviation from voter equality while retaining local subdivision boundaries. Thus, in order to arrive at an appropriate apportionment of seats on the board, it utilizes the method of equal proportions,[5] a variable board size, and grouping of contiguous municipalities into representative districts. Where representative districts are used, board members are elected at large from within that district. Utilizing this scheme the defendants arrived at the current distribution of seats, which was certified by the County Superintendent on November 6, 1972.[6]

[5] This method is explained in *New Jersey Legislative Reapportionment*, N.J. Dept. of Education at 10, and Schmeckebier, *Congressional Apportionment* (Brookings Institution 1941) at 22.

[6] Application of the statutory formula to North Hunterdon resulted in the following distibution of seats and relative deviations:

Representative District	*Members*	*Apportionment Population*	*Relative Deviation*
Franklin Township	1	2,154	+27.2%
Glen Gardner Hampton Bethlehem	2	3,645	+ 7.6%
Clinton Town Union	2	3,487	+ 3.0%
Lebanon Township	3	4,041	—20.5%
Tewksbury Califon	2	3,929	+16.0%
Clinton Township Lebanon Borough	3	5,550	+ 9.2%
High Bridge	2	2,606	—23.1%
	15	25,412	

Appendix A

An election of board members was conducted on February 6, 1973.

III.

A

Initially, defendants question the applicability of the one-person, one-vote principle to a local school board. Defendant school board asserts that this constitutional doctrine need not be applied to its apportionment problems; the State, on the other hand, argues that because the board's powers are both administrative and legislative in nature, a less rigorous application of the rule is warranted. Both positions are based on the decision in *Sailors* v. *Bd. of Education*, 387 U. S. 105, 87 S. Ct. 1549, 18 L. Ed. 2d 650 (1967).

While *Sailors* v. *Bd. of Education*, *supra*, might be taken as support for either of the positions advocated by the defendants, in light of more recent decisions we do not view *Sailors* as controlling. In that case the Court held that the one-person, one-vote rule was not applicable to a local county board of education. Its holding was predicated almost entirely on its conclusion that the board's powers there were administrative and not legislative in nature.[7]

But the test suggested in *Sailors*—whether the governmental unit in question exercised administrative or legislative power—was apparently short lived. In *Hadley* v. *Junior College District*, 390 U. S. 474, 88 S. Ct. 1114, 20

[7] The board had power to appoint a county school superintendent, prepare an annual budget, levy taxes and distribute those which were delinquent, take charge of educational programs and supervisory services, employ teachers and establish a school in the juvenile home.

sense of that term. (397 U. S. at 56; 25 L. Ed. 2d at 51; emphasis added)[9]

Hadley also forecloses the State's contention that significantly greater disparities in voting power may be justified on the basis of the functions which the board performs. As we have already indicated, any such distinction between administrative and legislative functions has been undercut by the Court's decision in *Hadley*. Moreover, Justice Black's opinion clearly disavowed any intention to draw a distinction in applying the rule between a local school board election and any state election. He wrote:

> When a court is asked to decide whether a State is required by the Constitution to give each qualified voter the same power in an election open to all, there is no discernible, valid reason why constitutional distinctions should be drawn on the basis of the purpose of the election. *If one person's vote is given less weight through unequal apportionment, his right to equal voting participation is impaired just as much when he votes for a school board member as when he votes for a state legislator.* While there are differences in the powers of different officials, the crucial consideration is the right of each qualified voter to participate on an equal footing in the election process. It should be remembered that

[9] The Court's more recent decisions in *Salyer Land Co.* v. *Tulare Lake Basin Water Storage District*, 410 U.S. 719, 93 S.Ct. 1224, 35 L.Ed.2d 659 (1973) and *Associated Enterprises* v. *Toltec Watershed Improvement District*, 410 U.S. 743, 93 S.Ct. 1237, 35 L.Ed.2d 675 (1973), are not contrary to the holding in *Hadley*, but rather fall within the exception envisioned in that case. See 410 U.S. at 728; 35 L.Ed.2d at 666.

> in cases like this one we are asked by voters to insure that they are given equal treatment, and from their perspective, *the harm from unequal treatment is the same in any election, regardless of the officials selected.* (397 U. S. at 54-55; 25 L. Ed. 2d at 50; emphasis added)

Finally, we note that in applying the one-person, one-vote rule to the board of education election involved in this case, we are following a clearly delineated line of authority which has concluded that such governmental bodies are limited by the strictures of this constitutional rule. In addition to *Hadley*, *see Avery* v. *Midland County*, 390 U.S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968) (county commissioners court); *Baker* v. *Regional High School District No. 5*, 520 F. 2d 799 (2 Cir. 1975), *cert.* den. 423 U. S. 995, 96 S. Ct. 422, 46 L. Ed. 2d 369 (1975) (regional school district); *Cantwell* v. *Hudnut*, 419 F. Supp. 1301 (D. Ind. 1976) (special district performing broad range of activities including police and fire services); *Barnes* v. *Bd. of Directors, Mt. Anthony U.H. School District*, 418 F. Supp. 845 (D. Vt. 1976) (board of directors of school district).

B

We also conclude that the facts of this case demonstrate that a prima facie violation of the Equal Protection Clause exists. Although the Supreme Court has repeatedly asserted that mathematical formulas are an impermissible basis for determining whether an apportionment plan is constitutional, *see, e.g., Mahan* v. *Howell*, 410 U.S. 315, 329, 93 S.Ct. 979, 35 L.Ed.2d 320, 333 (1973), modified 411 U.S. 922, 93 S.Ct. 1475, 36 L.Ed.2d 316 (1973):

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Roman v. *Sincock*, 377 U.S. 695, 84 S.Ct. 1449, 12 L.Ed.2d 620 (1964), it has steadily moved towards adopting a fixed *de minimis* standard for determining whether there has been a prima facie showing of a plan's validity. Maximum deviations in earlier cases of 9.9%, *White* v. *Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973), and 7.83%, *Gaffney* v. *Cummings*, 412 U.S. 735, 93 S.Ct. 2321, 37 L.Ed.2d 298 (1973), were held to be *de minimis*. These cases were taken as an indication that a State would have the burden of justifying any plan which resulted in maximum deviations which departed more than 10% from the norm. *See White* v. *Regester*, *supra*, 412 U.S. at 776-77; 37 L.Ed.2d at 331 (Brennan, J., concurring and dissenting); Casper, "Apportionment and the Right to Vote: Standards of Judicial Scrutiny," 1973 *The Supreme Court Review* 1. This term the Court confirmed the use of a 10% figure in determining whether plaintiff has met his burden of showing that a departure from strict voter equality is not *de minimis*. In considering maximum deviations of 16.5% and 19.3% in the Mississippi State Legislature, Justice Stewart stated that "they substantially exceed the 'under-10% deviations the Court has previously considered to be of prima facie constitutional validity. . . ." *Conner* v. *Finch*, U.S. , S.Ct. , L.Ed. 2d (1977).

In the instant case the maximum deviation between municipalities is 50.3%. This figure reflects deviations in Franklin Township and High Bridge of 27.2% and 23.1%, respectively, from the norm. It is clearly beyond the 10% deviation designated by the Court as constituting a *de minimis* departure from voter equality and any deviation upheld by the Court. *Compare Mahan* v. *Howell*, *supra* (upholding a deviation of 16.4%), and *Abate* v. *Mundt*,

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403 U.S. 182, 91 S.Ct. 1904, 29 L.Ed. 399 (1971) (upholding deviation of 11.9%), *with Kilgarlin* v. *Hill*, 386 U.S. 120, 87 S.Ct. 820, 17 L.Ed.2d 771 (1967), reh. den. 386 U.S. 999, 87 S.Ct. 1300, 18 L.Ed.2d 352 (1967) (striking down deviation of 26.48%); *Swann* v. *Adams*, 385 U.S. 440, 87 S.Ct. 569, 17 L.Ed.2d 501 (1976) (striking down deviations of 33.55% and 25.65%). We therefore find that the State has the burden of justifying the necessity for retaining the present apportionment formula embodied in N.J.S.A. 18A:13-8. *Kilgarlin* v. *Hill*, *supra*, 386 U.S. at 122, 17 L.Ed.2d at 774; *Jackman* v. *Bodine*, 55 N.J. 371 (1970), *cert.* den. 400 U.S. 949, 91 S.Ct. 39, 27 L.Ed.2d 87 (1970).

C

Essentially, defendants offer two justifications for the present scheme. First, they argue that the relatively small populations involved in the municipalities comprising the North Hunterdon district necessarily result in large deviations from strict voter equality. Although they admit that less dilution of voter equality could be obtained if local boundary lines were less rigidly followed, they argue that retention of such lines is a permissible interest which justifies the present results. Second, they contend that greater deviations are tolerable where the plan concerns a local subdivision such as that involved in this case. We recognize that these interests are legitimate, and would, under the appropriate circumstances, justify some deviation from the requirement that each vote be accorded equal weight. However, we hold that these reasons provide an insufficient justification for upholding an apportionment

scheme which yields such a great disparity between representative districts.[10]

Certainly the State may have a legitimate interest in retaining local municipal lines in apportioning seats on the North Hunterdon board. The Court has on various

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[10] Admittedly, there has been some confusion in determining whether a "rational" or a "compeling" state interest is required of the State in meeting its burden of justifying a plan which has a maximum deviation of greater than 10%. See Note, "Property Qualifications for Voting in Special Purpose Districts: Beyond the Scope of 'One Man-One Vote,'" 59 *Cornell L. Rev.* 687, 706-07 (1974). Traditionally, a compelling state interest was required where the right to vote was impaired. *City of Phoenix* v. *Kolodzieski*, 399 U.S. 204, 90 S.Ct. 1990, 26 L.Ed.2d 523 (1970); *Cipriano* v. *City of Houma*, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647 (1969); *Kramer* v. *Union Free School District*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed. 2d 583 (1969). This result was predicated on the fundamental nature of the right involved. However, in apportionment cases the Court has at times suggested that at least some dilution of the right to vote might be permissible if it were " 'based on legitimate considerations incident to the effectuation of a rational state policy.' " *Conner* v. *Finch*, *supra*, —— U.S. —— at ——, —— L.Ed.2d at ——, quoting *Reynolds* v. *Sims*, *supra*, 377 U.S. at 579, 12 L.Ed.2d at 537, and *Mahan* v. *Howell*, *supra*, 410 U.S. at 325, 35 L.Ed. 2d at 330.

One way to reconcile logically the Court's positions would be to reject a strict dichotomy between rational and compelling reasons for an apportionment plan. Rather than treat all deviations a under a single standard, the State's justification for a deviation from voter equality shoud reflect the degree to which it departs from the Court's 10% standard. There is some support for this in the Court's statement in *Mahan* v. *Howell*, *supra*, that

> a State's policy urged in justification of disparity in district population, however rational, cannot constitutionally be permitted to emasculate the goal of substantial equality. (410 U.S. at 326; 35 L.Ed.2d at 331)

occasions commented that the needs of a local community may sometimes justify departures from strict equality. *See Lockport* v. *Citizens For Community Action*, —— U.S. ——, —— S.Ct. ——, 51 L.Ed.2d 313, 323 (1977); *Abate* v. *Mundt*, *supra*, 403 U.S. at 185, 29 L.Ed.2d at 402-03. In the instant case we readily concede that by allowing each community, or continguous communities, to choose a representative for the board, it is more probable that he will be known to the constituency which he must serve. It becomes easier to make grievances known to one's chosen representative; a board member will be more likely to be aware of individual's concerns and local needs; and finally, a candidate has an easier task in trying to reach all voters through local campaigning. Moreover, we recognize that mathematically equal representation is more difficult when there are relatively small populations involved.

But these arguments are only sufficient to justify allowing slight deviations from equality. Thus, in *Abate* v. *Mundt*, *supra*, the Court considered very similar arguments in ruling on the validity of an apportionment plan for a county legislature. Although the Court allowed a maximum deviation of 11.9%, it clearly announced that such justifications could be of only limited utility. Justice Marshall, writing for the Court, observed that "a desire to preserve the intergrity of political subdivisions" coupled with the facts that

> local legislative bodies frequently have fewer representatives than do their state and national counterparts and that some local legislative districts may have a much smaller population than do congressional and state legislative districts, lend support to the argument that *slightly greater percent-*

> *age deviations may be tolerable* for local government apportionment schemes, . . . [403 U.S. at 185, 29 L.Ed.2d at 402-03; emphasis added]

Moreover, after noting that the decision there was based on the particular characteristics of that governmental unit, he stated:

> nothing we say today should be taken to imply that even these factors could justify substantially greater deviations from population equality. [*Id.* at 187, 29 L.Ed.2d at 403-04]

Virtually the same thought was expressed in the Court's most recent decision dealing with apportionment problems, *Conner* v. *Finch, supra.* Justice Stewart wrote:

> Recognition that a State may properly seek to protect the integrity of political subdivisions or historical boundary lines permits no more than "minor deviations" from the basic requirement that legislative districts must be "as nearly of equal population as is practicable." [U.S. at ; L. Ed.2d at]

And our own Court has disputed just as vigorously the contention that local boundary lines could be used to justify substantial departures from the one-person, one-vote rule. In *Jackman* v. *Bodine, supra,* Chief Justice Weintraub explained that "the municipal ward, although conceivably useful with respect to the problem of gerrymandering, does not for that reason, or for any other reason, advance the purpose of apportionment sufficiently to justify population inequality, . . ." 53 N.J. at 383. He added: "no deviation will be defensible on that account." *Id.*

There is even less reason in this case than in most for allowing a concern for retaining local subdivisions to control. While the North Hunterdon region may be relatively large, 171.30 square miles, the school board is not faced with the task of reconciling the potentially competing interests which might be found in a governmental body exercising state-wide powers.[11] There are no inner-city areas whose local needs are distinguishable from those of the area as a whole; and because various communities have small populations, a candidate is more likely to be able to reach his constituency even though he is required to campaign outside of his hometown. Hence, we cannot conclude that the State has shown a sufficient reason for upholding the substantial deviation inherent in this plan.

IV.

This Court is certainly not the proper body to devise a new apportionment plan, except as a last resort. *Jackman* v. *Bodine,* 43 N.J. 453, 473 (1973). The Legislature brings to the problem at hand the requisite knowledge necessary to devise an apportionment scheme which hopefully will satisfy the political needs of the region involved. In assessing the relative merits of a plan devised by a federal court, as opposed to a state legislature, Justice Stewart recently remarked that

> a state legislature is the institution that is by far the best situated to identify and then reconcile tra-

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[11] Significantly, the school board in this case does not even handle all educational functions for the regional district, but is limited to administration of the secondary school program. There is a general school district in each municipality which is responsible for education of the first nine grades of school.

ditional state policies within the constitutionally mandated framework of substantial population equality. The federal courts by contrast possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name. [*Conner* v. *Finch,* U.S. at ; L.Ed.2d at]

Accordingly, we hold that the present scheme is invalid and N.J.S.A. 18A:13-8 is unconstitutional as applied to the North Hunterdon regional school district. We expect the Legislature to devise an apportionment formula consistent with the Constitution so that a legally constituted board may be elected in February 1978. Until a suitable plan is devised, the present members of the North Hunterdon Regional School Board shall continue in office.

APPENDIX B

Order of Dismissal of July 16, 1975, Superior Court of New Jersey, Appellate Division

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-3199-74

MOTION NO. M-2138-74

BEFORE PART I

JUDGES CARTON
ALLCORN
MORGAN

TOWNSHIP OF FRANKLIN IN THE COUNTY OF HUNTERDON, a Municipal Corporation of New Jersey, CHARLES MATHEWS, AUGUST KNISPEL and CHARLES A. PATKOCHIS

vs.

BOARD OF EDUCATION OF THE NORTH HUNTERDON REGIONAL HIGH SCHOOL, a Body Politic and Corporate of New Jersey, etc.

Moving Papers Filed June 26, 1975

Answering Papers Filed July 7, 1975

Date Submitted to Court July 10, 1975

Date Decided July 15, 1975

Appendix B

ORDER

This matter having been duly presented to the Court, it is hereby ordered as follows:

MOTION TO DISMISS APPEAL Granted

For the Court:

LAWRENCE A. CARTON, JR.
P.J.A.D.

Witness, the Honorable Lawrence A. Carton, Jr., Presiding Judge of Part I, Superior Court of New Jersey, Appellate Division, this 15th day of July 1975.

ELIZABETH McLAUGHLIN
Clerk of the Appellate Division

APPENDIX C

Chapter 161, Laws of 1972, Amending N.J.S.A. 18A:13-8

CHAPTER 161

AN ACT concerning regional school districts and amending N.J.S. 18A:13-8.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*:

1. N.J.S. 18A:13-8 is amended to read as follows:

Number of members of regional boards; apportionment.

18A:13-8. The board of education of a regional district shall consist of nine members unless it consists of more than nine constitutent districts, in which case the membership shall be as hereinafter set forth. If there are nine or less constituent districts, the members of the board of education of the regional district shall be apportioned by the county superintendent or county superintendents of the county or counties in which the constituent districts are situate, among said districts as nearly as may be according to the number of their inhabitants except that each constituent district shall have at least one member.

In making the apportionment of the membership of a regional board of education among the several school districts uniting to create a regional school district, as required by section 18A:13-36, there shall be subtracted from the number of inhabitants of a constituent school district, as shown by the last Federal census officially promulgated in this State, the number of such inhabitants who according to the records of the Federal Bureau of the Census were patients in, or inmates of, any State or Federal hospital or prison, or who are military personnel stationed at,

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or civilians residing within the limits of, any United States Army, Navy or Air Force installation, located in such constituent school district. The resulting number of inhabitants of the constituent district, so determined, shall be known as the apportionment population of the constituent district.

If there are more than nine constituent districts, the board of education shall consist of not less than nine and not more than 15 members. The number shall be apportioned among the constituent districts by the appropriate county superintendent or superintendents through the following procedure:

a. The apportionment population of each constituent district shall be calculated.

b. An "approximate board size" shall be selected, which shall be the same as the number of constituent districts.

c. An "approximate representative ratio" shall be calculated by adding the apportionment population of all constituent districts and dividing the sum by the approximate board size.

d. All constituent districts shall be listed in ascending order of their apportionment populations. If the first constituent district in said list has an apportionment which is less than the "approximate representative ratio," it shall be combined with the constituent district contiguous to it having the smallest apportionment population. This process shall be repeated for each successively larger constituent district or combination of constituent districts until all remaining constituent districts or combinations of constituent districts shall have apportionment populations equal

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to, or exceeding the approximate representative ratio. The districts formed in this manner shall be known as "representative districts."

e. There shall be established a priority list according to the method of equal proportions for the apportionment of not more than 15 seats on the regional district board of education among the representative districts.

f. At each successive possible size for the regional district board of education from nine through 15 members:

(1) the representative ratio shall be calculated by dividing the sum of the apportionment population of the representative districts by the number of members of the regional board of education, and

(2) the members shall be apportioned among the representative districts by the method of equal proportions, and

(3) the relative deviation for each representative district shall be calculated by dividing the apportionment population of the representative district by the number of seats assigned to that district, subtracting from the resulting quotient the representative ratio, and expressing the result as a percentage of the representative ratio.

g. The number of members of the regional district board of education shall be fixed at the point from nine through 15 members, inclusive, where the most extreme relative deviation of any representative district is found to be the smallest.

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h. The members of the regional district board of education shall be apportioned among the representative districts according to the method of equal proportions, and where a representative district is composed of more than one constituent district, members shall be elected at large from within the representative district.

i. Whenever the above reapportionment procedure is used for a regional district having more than nine constituent districts, the terms of office of all incumbent board of education members shall terminate on the Monday following the first Tuesday in February not less than 60 days following certification by the county superintendent of the representative districts and the number of members to be elected from each; provided, that if the reapportionment results in any representative district retaining its former boundaries and the same number of board members, that the members elected from such a district shall serve the full term for which they were elected. All other board members shall be elected in an election to be held on the first Tuesday in February at least 60 days following certification by the county superintendent for initial terms of office to be designated in advance by the county superintendent so that, as nearly as possible, ⅓ of the board shall be elected in each future year, to serve for 3-year terms, and where a representative district has more than one member, their terms of office shall terminate in different years.

If any constituent district is a consolidated district, or a district composed of two or more municipalities, and

a. The regional district is a limited purpose regional district and such constituent district has such population that it is entitled to have apportioned

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to it a number of members equal to or greater than the number of districts making up such constituent district, or

b. The regional district is an all purpose district,

the membership of the regional board of education from such district shall be apportioned, and from time to time reapportioned, and the members from the district shall be elected, as their respective terms expire, in the same manner as though each of the municipalities making up such constituent district were constituent districts of the regional district.

2. This act shall take effect October 1, 1972.

Approved September 27, 1972.

APPENDIX D

References to Federal Question in Record Below

Excerpt from Statement of Proceedings in Lieu of Transcript Filed by the Township of Franklin in the Supreme Court of New Jersey

The following statement of the evidence and proceedings is presented in lieu of a transcript pursuant to Rule 2:5-3(e) of the Rules Governing the Court of the State of New Jersey.

STATEMENT OF THE FACTS

Appellants, Charles Mathews, August Knispel and Charles A. Patkochis, are residents of and the duly elected and serving members of the Township Committee of appellant, Township of Franklin in the County of Hunterdon.

The respondent, Norman Gathany, is the duly appointed and serving Hunterdon County Superintendent of Schools, an employee and appointee of respondent, Fred G. Burke, State Commissioner of Education, N.J.S.A. 18A:7-1, and directed and supervised by him, N.J.S.A. 18A:4-29.

The respondent, Board of Education, is under the supervision and control of respondent, Norman Gathany, County Superintendent of Schools, N.J.S.A. 18A:7-5 and 8, 18A:13-4 and 12.

The apportionment of 15 member seats of the North Hunterdon Regional High School Board of Education among the municipal sending districts was done by re-

spondent, Norman Gathany, Hunterdon County Superintendent of Schools, pursuant to N.J.S.A. 18A:13-8.

There are presently 12 constituent municipal sending districts in this "Regional" and their 1970 census populations are as follows:

Name	*Population*
Bethlehem Township	1,385
Califon Borough	970
Clinton Town	1,742
Clinton Township	5,119
Franklin Township	2,154
Glen Gardner Borough	874
Hampton Borough	1,386
High Bridge Borough	2,606
Lebanon Borough	885
Lebanon Township	4,235
Tewksbury Township	2,959
Union Township	2,351
	26,666

In performing his statutory functions, the respondent, Norman Gathany, subtracted from the last federal census figures shown above certain inhabitants, i.e., hospital and prison inmates, etc., and thereby arrived at an "apportionment population" for each constituent municipal district as follows:

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Name	*Adjustment*	*Apportionment Population*
Bethlehem Township	——	1,385
Califon Borough	——	970
Clinton Town	——	1,742
Clinton Township	454	4,665
Franklin Township	——	2,154
Glen Gardner Borough	——	874
Hampton Borough	——	1,386
High Bridge Borough	——	2,606
Lebanon Borough	——	885
Lebanon Township	194	4,041
Tewksbury Township	——	2,959
Union Township	606	1,745
	1,254	25,412

An "approximate representative ratio" of 1,694 was then calculated by dividing the total "apportionment population (25,412) by the board size (15).

The respondent, Norman Gathany, then allocated the 15 board seats among the constituent member districts as shown below, resulting in the "relative deviations" (percentage of the representative ratio) shown:

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Name	*Seats*	*Apportionment Population*	*Relative Deviation*
Franklin Township	1	2,154	+27.15%
Glen Gardner Borough Hampton Borough Bethlehem Township	2	3,645	+ 7.59%
Clinton Town Union Township	2	3,487	+ 2.92%
Lebanon Township	3	4.041	—20.48%
Tewksbury Township Califon Borough	2	3,929	+15.97%
Clinton Township Lebanon Borough	3	5,550	+ 9.21%
High Bridge Borough	2	2,606	—23.08%
	15	25,412	

Before making the above apportionment of Board seats the respondent, Norman Gathany, conferred with the office of his superior, the respondent, Fred G. Burke, State Commissioner of Education.

Members of the respondent, Board of Education of the North Hunterdon Regional High School have been elected and are now seated and serving from the constituent member districts in accordance with the above apportionment of board seats.

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Excerpt from Supplemental Statement of Facts Submitted on Behalf of the North Hunterdon Regional High School District and Filed in the Supreme Court of New Jersey

As to Apportionment of the Board

6. Assembly Bill No. 454 introduced in the 1972 Session became P. L. 1972, c. 161 which amended N.J.S.A. 18A: 13-8. This act pertains to the apportionment of the Board.

7. (a) An explanation of the above amendment to N.J. S.A. 18A:13-8 is set forth in the official Statement to Assembly Bill No. 454.

A copy of this Statement is annexed hereto as Schedule A and the statements therein are now repeated.

(b) The apportionment of the board membership set forth in the official Statement pertains to the North Hunterdon Regional High School District (hereinafter sometimes called the Regional District) at a time when it was composed of 11 municipalities (or constituent districts) before the admission of the Borough of High Bridge.

8. The highest relative deviation of any representative district within the Regional District was at that time only +13.3%.

9. The number of regional school districts in New Jersey exceeds 60.

10. The North Hunterdon Regional High School District has characteristics which make it unique.

Some of these characteristics are hereinafter set forth.

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(a) The North Hunterdon Regional High School District was composed of 11 constituent districts (The Townships of Bethlehem, Clinton, Franklin, Lebanon, Tewksbury and Union; the Boroughs of Califon, Glen Gardner, Hampton and Lebanon, and the Town of Clinton) before the admission of the Borough of High Bridge.

The Regional District presently contains 12 constituent districts.

(b) The North Hunterdon Regional High School District includes within its bounds the largest number of municipalities (first 11 and now 12) of any regional school district in New Jersey, and in fact in the United States.

(c) The North Hunterdon Regional High School District since its formation over 25 years ago, has been the only regional district in New Jersey with a board exceeding 9 members in numbers.

(d) The North Hunterdon Regional High School District contains a large area.

The Regional District, before the admission of High Bridge contained an area of 168.90 square miles (as was set forth in each of the various Annual Reports of the Commissioner of Education, entitled Financial Statistics of School Districts).

With the admission of High Bridge's 2.40 square miles, the total area of this regional district becomes 171.30 square miles.

The area of the North Hunterdon Regional High School District is almost as large as the total land area of the counties of Hudson and Essex combined.

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Hudson County	45.03 sq. miles
Essex County	127.10 " "
	172.13 sq. miles

(e) Despite its large number of municipalities (12) and its large land area (171.30 square miles), the North Hunterdon Regional High School District serves a comparatively small apportionment population (25,412).

(f) Prior to the amendment of N.J.S.A. 18A:13-8 by the passage of P.L. 1972, c. 161, all of the regional school districts in New Jersey (including the North Hunterdon Regional High School District) alloted board representation to separate municipalities with each municipality in effect being a "separate constituent district".

11. Unique problems in apportionment of elective representation for boards of public bodies demand unique solutions in order to achieve the one-man one-vote concept.

12. The concept of Assembly Bill No. 454 (now an amendment to N.J.S.A. 18A:13-8) is a unique attempt to achieve the one-man one-vote concept in an unique regional school district.

It combines into a single apportionment process:

(a) The use of the Method of Equal Proportions;

(b) The use of a variable board size;

(c) The grouping of some municipalities into representative districts, and

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(d) A fully automatic system, with no discretionary powers granted to any official.

13. (a) The Method of Equal Proportions is utilized in N.J.S.A. 18A:13-8 for board apportionment and the official Statement appended to Assembly Bill No. 454 so states.

(b) The Method of Equal Proportions is presently the basis for allocating the number of members of the House of Representatives among the 50 American States.

It is recognized as one of the most equitable methods of apportionment for elective public bodies.

However, its use for apportionment of local bodies has been (if not non-existent) rare.

14. The concept of a variable board size is unique in the field of the search for satisfying the one-man one-vote concept.

The procedure of apportioning the board membership for 7 different board sizes (boards comprised of 9, 10, 11, 12, 13, 14 or 15 members) is a unique attempt to achieve the smallest relative deviations possible in order to meet the challenge presented by the Regional District's apportionment problem.

The board size *prior* to High Bridge's admission was 12 in number, based upon the automatic working of N.J.S.A. 18A:13-8. This so happened to produce the least relative deviation among the constituent districts as compared with boards of 9, 10, 11, 13, 14 and 15 members.

The board size *after* High Bridge's admission as a constituent district became 15 in number.

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The application of the automatic mechanism of N.J.S.A. 18A:13-8 after the 1980 census could result in a board size of any one of the 7 possible board sizes, depending upon the new population figures.

Assembly Bill No. 454 was drafted by Dr. Ernest C. Reock, Jr., Director, Bureau of Government Research, Rutgers University.

No other public body in the United States (State, County, Municipal or Local) to the Board's knowledge or to the knowledge of Dr. Reock uses a variable board size in an attempt to achieve comparative representative equality under the one-man one-vote concept.

15. Small population apportionment ratios tend to result in higher relative deviations than large populaiton apportionment ratios.

The approximate representative ratio for the existing Regional District is only 1694 persons.

This is a small figure when contrasted with similar figures obtained in apportionment of Congressional Districts and Legislative Districts in New Jersey and elsewhere.

Dealing with small number approximate representative ratios results in relative deviations where the paper percentage far exceeds their practical importance.

For example, the relative deviation of Franklin Township is claimed by plaintiffs to be +27.15% computed as follows:

Apportionment population	2154
Approximate representative ratio	1694
	460
Relative deviation	27.15%

(460 divided by 1694 equals 27.15%)

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As small a popualtion reduction for Franklin Township as 169 persons (10% of the 1694 approximate population ratio) could reduce its relative deviation from + 27% to approximately + 17%.

As the relative population size of governmental units becomes smaller (for example, school districts as compared with Congressional districts and Legislative districts), the usefulness of relative deviations as a measure of inequality is less, and absolute numbers become more important.

For example, the transfer of only 567 persons from Franklin Township to High Bridge would completely equalize the relative deviations about which Franklin complains.

16. No regional school district in New Jersey is presently elected at large.

To elect the North Hunterdon Regional High School District Board at large would create a type of board different from all other regional boards in New Jersey, which would constitute a method of election entirely disregarding representation from constituent districts.

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Affidavit of Dr. Ernest C. Reock, Jr., in Support of Counter-Statement of Facts Submitted on Behalf of the State Respondents and Filed in the Supreme Court of New Jersey

1. I have been Director of the Rutgers University Bureau of Government Research since 1960, and was a staff member of the Bureau from 1950 until 1960.

2. I hold a doctorate in political science and have in the course of my work with the Bureau developed a specialization in the area of legislative apportionment, a subject on which I have been writing since approximately 1950. A partial listing of my publications in this are is attached hereto and incorporated by reference as Exhibit A.

3. In my capacity as a specialist in apportionment matters, I met with the Supreme Court of New Jersey in 1965 at the invitation of Justice Frederick Hall to discuss possible judicial solutions to the apportionment question then before the court in *Jackman* v. *Bodine*, should the Legislature fail to act. I also acted as a consultant to the Constitutional Convention on Legislative Reapportionment held in 1966 as a result of the court's decision in *Jackman* v. *Bodine*.

4. I have read all of the papers filed so far in this case and have been called upon to set forth my knowledge of the apportionment question as it pertains to regional school districts and specifically to North Hunterdon Regional High School District.

5. Sometime in late 1970, I was asked by Wesley L. Lance, attorney for respondent board, to advise him of methods which could be used in reapportioning that board

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in order to most closely comply with the one man one-vote principle.

6. In a memorandum dated January 11, 1971 (Exhibit B) I advised Senator Lance of the various possible methods. (Exhibit B contains two sets of figures reflecting adjustments due to population changes following issuance of the final 1970 decennial census.) I met with members of respondent school board, as then constituted, to explain this memorandum on January 12, 1971.

7. As a result of this discussion and of Senator Lance's request, I then drafted an amendment to N.J.S.A. 18A:13-8 setting forth the procedures suggested in my January 11, 1971 memorandum, including the "method of equal proportions". I sent a copy of this draft amendment to Senator Lance under cover of letter dated January 15, 1971. (Exhibits C and D.)

8. By letter dated February 2, 1971 (Exhibit E), Senator Lance asked me to draft legislation which, contrary to my prior draft, would deal only with the situation of districts having more than nine member municipalities.

9. By letter dated February 8, 1971 I commented upon Senator Lance's suggestions concerning methods of apportionment related to municipal election districts, pointing out the impact such an approach could have on school elections (Exhibit F). I also supplied Senator Lance with a draft amendment to N.J.S.A. 18A:13-8 which would provide a method of apportionment for districts consisting of more than nine constituent districts, i.e. North Hunterdon Regional High School District (Exhibit G).

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10. On September 23, 1971 I again met with the respondent board to discuss with its members the various possible approaches to apportionment of its membership.

11. In a memorandum dated September 27, 1971 (Exhibit H) I summarized the possible approaches to apportionment of a board in a regional district having more than nine constituent members in order to comply with the one man/vote principle as judicially interpreted. In paragraph 2 of that memorandum I analyzed the possible alternatives and their relative advantages and drawbacks. In paragraph 3 I set forth the components of the proposed amendment to N.J.S.A. 18A:13-8. The entire remaining portion of that memorandum sets forth the procedures to be followed in applying the method contained in that amendment to such a district and particularly to the North Hunterdon district. I would like to emphasize that this is the method set forth in N.J.S.A. 18A:13-8 as currently worded, contrary to the description of that method set forth in petitioners' proposed "Statement of Proceedings in Lieu of Transcript".

12. On September 28, 1971 I met with respondent Norman Gathany to discuss with him possible approaches to the reapportionment of respondent board.

13. On October 5, 1971 I met with Assemblyman Foran and Senator Lance to discuss the legislation Assemblyman Foran was seeking to sponsor to amend N.J.S.A. 18A:13-8. Under cover of letter dated October 6, 1971, I sent to Assemblyman Foran a draft statement he had requested to be attached to the proposed legislation (Exhibits I and J).

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14. By letter dated October 14, 1971 Senator Lance wrote to Assemblyman Foran, suggesting that the draft amendment be reworded to make clear that it would not affect regional districts having nine or fewer members at that time (Exhibit K).

15. Under cover of letter dated December 15, 1971 (Exhibit L), Senator Lance provided me with a copy of a statement (Exhibit M) he had prepared for the "Hunterdon County Democrat" summarizing the steps being taken to reapportion respondent board in accordance with the one-man one-vote principle.

16. By letter dated February 14, 1972 (Exhibit N) Senator Lance suggested to Assemblyman Foran further changes in the proposed amendment, which had not been introduced as Assembly Bill 454 in the 1972 legislative session, together with an explanatory statement which I had originally drafted (Exhibit O).

17. By letter dated May 30, 1972 Senator Lance wrote to me requesting information whether A-454 would permit the addition of a twelfth municipality (High Bridge) to the North Hunterdon Regional High School District without further legislation (Exhibit P). By letter dated June 6, 1972, I indicated that under A-454 the addition of High Bridge would result in a fifteen-member board, and set forth the apportionment of members which would result (Exhibit Q).

18. On September 27, 1972 Governor Cahill signed A-454, as amended, into law, to be effective on October 1, 1972 (Exhibit R).

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19. As a result of the litigation now undertaken by petitioners in this matter, I have reviewed the history of the reapportionment of respondent board and of the various options considered in amending N.J.S.A. 18A:13-8. It is my continuing expert opinion that an at-large election involving all eligible voters living within the municipalities served by respondent board could result in the dilution of local control over regional district programs and the domination of such districts by those municipalities with the largest voting population.

20. Alternatively, a regional school board could be increased in size to the point where the smallest member district had one member on the regional board and every other member had a proportionately larger number of members according to their size in relation to the smallest district. It is my view that this method of apportionment would result in an unmanageably large board unsuited to effective educational governance.

21. It therefore continues to be my expert opinion that the current method of apportionment of regional boards set forth in N.J.S.A. 18A:13-8, both in theory and as currently applied to respondent board, most closely approaches the one-man one-vote principle, within the principles of sound educational governance.

Supreme Court, U. S.
FILED
MAR 16 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 11,819

77-885

COMMISSIONER OF EDUCATION OF NEW JERSEY AND SUPERINTENDENT OF SCHOOLS OF HUNTERDON COUNTY,

Petitioners,

v.

BOARD OF EDUCATION OF THE NORTH HUNTERDON REGIONAL HIGH SCHOOL, TOWNSHIP OF FRANKLIN, CHARLES MATHEWS, AUGUST KNISPEL and CHARLES A. PATKOCHIS,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

SUPPLEMENTAL BRIEF OF PETITIONERS

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SUPPLEMENTAL BRIEF OF PETITIONERS

The respondents, Township of Franklin, Charles Mathews, August Knispel and Charles A. Patkochis, waived their right to file a brief in opposition to Peti-

tion for Writ of Certiorari. However, these respondents seek to rely upon certain arguments raised in their brief in opposition to Motion for Stay previously filed in this matter. In such response, the respondents attach great significance to a legislative proposal, A-3584, then pending before the Governor of New Jersey. A copy of this bill was appended to their response.

The bill, A-3584, had been transmitted to the Governor in accordance with the provisions of Article V, Section 1, Paragraph 14(b) of the New Jersey Constitution. In accordance with that constitutional provision, A-3584 would only become law if signed by the Governor within the forty-five (45) day period, Sundays excepted, following the adjournment *sine die* of the Legislature. On March 3, 1978, Governor Brendan T. Byrne, stated that he would not sign A-3584 and would file it, without approval. This action of Governor Byrne had the same effect as a veto of A-3584.

Therefore, to the extent that respondents' argument is premised upon the possible enactment of A-3584 into law, it is no longer viable.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Attorney General of New Jersey
Attorney for the Petitioners, Commissioner of Education of New Jersey and Superintendent of Schools of Hunterdon County.